



Excerpt from *Fracas in Congress*

Source: “[Fracas in Congress: The Battle of Honor between Matthew Lyon and Roger Griswold](#)” [<http://etext.lib.virginia.edu/journals/EH/EH41/Neff41.html>] by Brian T. Neff, Yale University, available on the Electronic Text Center of the University of Virginia, a link from EDSITEment resource **Internet Public Library** [<http://www.ipl.org/>].

On the morning of February 15, 1798, pandemonium broke out on the floor of the United States House of Representatives. Without warning, Federalist Representative Roger Griswold of Connecticut strode across the chambers to where his colleague Matthew Lyon was sitting preoccupied with some correspondence. Cursing him as a “scoundrel,” Griswold pounded the Vermont Republican’s head and shoulders with a thick, hickory walking stick...

Moments after the two grappling combatants were separated, Lyon retreated to the House water table; when Griswold re-approached him, Lyon lunged forward with the fire tongs and initiated a second brawl...

Griswold’s attack was not a random act of violence—to some it did not even come as much of a surprise. On January 30, Lyon had brazenly insulted the Connecticut Federalist Representative and an offended Roger Griswold had retaliated by publicly calling Lyon a coward. To this character attack Lyon had responded by spitting directly in Griswold’s face; when Congress subsequently failed to marshal a two-thirds majority to expel Lyon for indecorum, Griswold thought it necessary to avenge his damaged honor by publicly caning Lyon in the House chambers. This hickory stick attack was the climax of over two weeks of fierce congressional turmoil.

In contemporary politics, the Matthew Lyon-Roger Griswold confrontations might simply appear as battles of individual beliefs or conflicting personalities. After all, Lyon was a Republican and Griswold, a Federalist; Lyon was an Irish immigrant of humble origins, while Griswold belonged to the upper echelon of the Connecticut elite. The congressional fracas of 1798, however, is peculiar to the political culture of early national America, a culture in which politicians were hypersensitive to their public reputations as gentlemen, in which personal honor and politics were intimately related. Lyon and Griswold fought in a competition of reciprocal character attacks, each man intending to reclaim his damaged honor by degrading the other. In defending or castigating the “Spitting Lyon,” Congressmen fought almost entirely along party lines, calling on the political honor code to label one combatant the victim and gentleman, the other the culprit and coward. This unseemly congressional scandal thus manifested and exacerbated the ideological rift between the Federalists and the Republicans and was a national awakening to the virulence of America’s increasingly partisan political process...

...examine exactly what happened on the morning of January 30, 1798. The House of Representatives had just conducted a vote on the impeachment of Senator William Blount. ...Matthew Lyon began to rant about the “malign influence of Connecticut politicians.” He boldly accused the Connecticut Federalists of hypocrisy and corruption, asserting that they “acted in opposition to the interests and opinions of nine-tenths of their constituents.” He charged them with “pursuing their own private views,” greedily seeking offices for the sole sake

of power and title, and eradicating political opposition through an unjust monopoly of the press. Sarcastically, he accused the Federalists of brainwashing their constituents with opiates, claiming finally that “if he should go into Connecticut, and manage a press there six months, he could effect a revolution, and turn out the present Representatives.” As later testimony reveals, Lyon spoke loudly, “as if he intended to be heard by all those who were near him.”

Standing nearby, Roger Griswold grew irate listening to Lyon and from a distance asked him whether he would march into Connecticut “[wearing his] wooden sword”; this was a direct reference to Lyon’s temporary but dishonorable discharge from the Continental Army. Lyon either did not hear Griswold’s comment or chose to ignore it; in any case, Griswold approached Lyon, placed his hand on his arm, and repeated the question. Insulted, embarrassed, and dishonored before his fellow Representatives, Lyon spat straight in Griswold’s face. Without a word, Griswold wiped the spit with a cloth and exited the chambers. The Committee of Privileges instantly drew up a formal resolution calling for the expulsion of Matthew Lyon for “a violent attack and gross indecency.”



Excerpts from John Adams's Special Message

Source: “[John Adams—Special Message to the Senate and the House, May 16, 1797](#)” [<http://www.yale.edu/lawweb/avalon/presiden/messages/ja97-03.htm>] on the EDSITEment resource [The Avalon Project](#) [<http://www.yale.edu/lawweb/avalon/avalon.htm>].

Adams describes an insult to the United States on the part of France:

...After the President of the United States received information that the French Government had expressed serious discontents at some proceedings of the Government of these States..., he thought it expedient to send to that country a new minister... For this purpose he selected from among his fellow-citizens a character ... most esteemed and respected in the nation... The (French) minister of foreign relations informed the... American minister that the (French) Executive Directory had determined not to receive another minister... from the United States until after the redress of grievances... During his residence at Paris, cards of hospitality were refused him, and he was threatened with being subjected to the jurisdiction of the minister of police... The refusal on the part of France to receive our minister... until we have acceded to their demands without discussion and without investigation is to treat us neither as allies nor as friends, nor as a sovereign state.

Adams accuses France of attempting to cause dissension among the citizens of the United States:

The speech of the (French) President discloses... a disposition to separate the people of the United States from the Government, to persuade them that they have different affections, principles, and interests from those of their fellow citizens whom they themselves have chosen to manage their common concerns, and thus to produce divisions fatal to our peace. Such attempts ought to be repelled with a decision which shall convince France and the world that we are not a degraded people, humiliated under a colonial spirit of fear and sense of inferiority, fitted to be the miserable instruments of foreign influence...

Adams accuses France of secretly deciding to ignore a significant part of a treaty of friendship and commerce with the United States:

It is my sincere desire... to preserve peace and friendship with all nations; [but] there is reason to believe that the Executive Directory passed a decree on the 2d of March last contravening in part the treaty of amity and commerce of 1778, injurious to our lawful commerce and endangering the lives of our citizens.

As a response to the problems with France and ongoing conflict between Britain and France and the resulting disruption to American shipping, Adams asks for a military build-up:

A naval power, next to the militia, is the natural defense of the United States.

.... I recommend to your consideration a revision of the laws for organizing, arming, and disciplining the militia, to render that natural and safe defense of the country efficacious.

President Adams addresses directly the members of the joint session of Congress. First, he warns about the danger of “foreign and domestic factions” on American citizens:

...Gentlemen of the Senate and Gentlemen of the House of Representatives:

...endeavors have been employed to foster and establish a division between the Government and people of the United States. To investigate the causes which have encouraged this attempt is not necessary; but to repel, by decided and united councils, insinuations so derogatory to the honor and aggressions so dangerous to the Constitution, union, and even independence of the nation is an indispensable duty. It must not be permitted to be doubted whether (There must be no doubt that) the people of the United States will support the Government established by their voluntary consent and appointed by their free choice, or whether, by surrendering themselves to the direction of foreign and domestic factions, in opposition to their own Government, they will forfeit the honorable station they have hitherto maintained...

Then Adams ends by discussing the principles he considers important:

....having ... devoted the best part of my life to obtain and support... independence, and constantly witnessed the patriotism... of my fellow-citizens on the most trying occasions, it is not for me to hesitate or abandon a cause in which my heart has been so long engaged.

Convinced that the conduct of the Government has been just and impartial to foreign nations, that those internal regulations which have been established by law for the preservation of peace are in their nature proper, and... fairly executed, nothing will ever be done by me... to innovate upon principles which have been so deliberately and uprightly established, or to surrender in any manner the rights of the Government. To enable me to maintain this declaration I rely, under God, with entire confidence on the firm and enlightened support of the National Legislature and upon the virtue and patriotism of my fellow-citizens.



Excerpts from the Sedition Act (with Annotations)

An Act in Addition to the Act, Entitled “An Act for the Punishment of Certain Crimes Against the United States.”

It was declared a misdemeanor to interfere with the work of the government and its officials and/or to conspire or assist in any way in the fostering of “insurrection, riot, unlawful assembly” whether or not such actions had any effect:

SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure... of the government of the United States..., or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing or executing his trust or duty, and if any person or persons... shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years...

It was declared a misdemeanor to write or assist—in any way—the writer of anything “false, scandalous, and malicious... against the government of the United States”:

SEC. 2. And be it farther enacted, That if any person shall write, print, utter or publish, or shall cause... to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame [attack the reputation of] the said government, or either house of the said Congress, or the said President; ...or to excite against them... the hatred of the good people of the United States, or to stir up sedition [rebellion] within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States... or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

The accused could defend themselves in court—before a jury—by proving what they had written was actually true and therefore not libelous:

SEC. 3. And be it further enacted and declared, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defense, the truth of the matter... charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

The Sedition Act was to be in force for a limited time only—until March 3, 1801—though cases against those suspected of committing “crimes” while the law was in effect could be prosecuted even after it had expired:

SEC. 4. And be it further enacted, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer: Provided, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.



Excerpts from the Debate in the House of Representatives

The excerpts that follow are from [The Annals of Congress](http://memory.loc.gov/ammem/amlaw/lwac.html) [<http://memory.loc.gov/ammem/amlaw/lwac.html>] for the 5th Congress, Second Session, available on the EDSITEment resource [American Memory](http://memory.loc.gov/) [<http://memory.loc.gov/>].

1. Mr. S. Smith: Strike out the words “by any writing, printing, or speaking shall threaten... [an] officer in public trust, with any damage to his character...” as I conceive them to be in direct contradiction to the third amendment of the Constitution, and as I have not forgotten the oath I took to maintain the Constitution, I would never consent to vote for these words. (pp. 2133-34)

2. Mr. Thatcher: If a judge was to pronounce judgment in a case, and the person upon whom it was passed were to come to him and threaten to shoot him, or to burn his house, if he suffered the sentence to be executed, would it be a breach of the Constitution to pass a law to punish him? (pp. 2133-34)

3. Mr. T. Claiborne: As to what the gentleman from Massachusetts had said with respect to a person’s threatening the life, etc... of a Judge, such law is certainly not necessary to punish such a person. (pp. 2133-34)

4. Mr. T. Claiborne: I view the principle of this bill as radically wrong, and ... fraught with the most serious mischiefs, from its creating crimes which were never before thought of in this country... Suppose that abusive paragraphs are published against the President, if they are calumnies, they will have no weight; and, if they are truth, they ought to be published. (pp. 2133-34)

5. Mr. W. Claiborne: Prosecutions of this kind have very rarely happened; in some of the States, a cause of this kind has never been tried... The age, however, seems now to be at hand, when they may be expected to increase, and I believe such a provision proper to prevent any misunderstanding on the subject.... (pp. 2135-36)

6. Mr. Nicholas: I want an explanation of the principles upon which this bill is founded. I confess it is strongly impressed on my mind, that it is not within the powers of the House [of Representatives] to act on this subject. I have looked in vain among the enumerated powers given to Congress in the Constitution, for authority to pass a bill like the present (one); but I found instead an express prohibition against passing it... One of the first acts of this Government was to propose certain amendments to the Constitution... It is now expressly declared... “that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;” and also, “that Congress shall make no law abridging the freedom of speech, or of the press.” (pp. 2139-40)

7. Mr. Nicholas: I wish you gentlemen would inform me where you draw the line between this liberty and licentiousness of which they speak... It has been the object of all regulations with respect to the press, to destroy the only means by which the people can examine and become acquainted with the conduct of persons employed in their Government... It is not lying that will be suppressed but the truth... If printers are subject to prosecution for every paragraph which appears in their papers... it cannot be expected that they will exercise that freedom.

8. Mr. Nicholas: I have heard it said that all the states take cognizance of offenses of this sort. But does this give the power to the General Government? (pp. 2141-42)

9. Mr. Nicholas: The publication of one falsehood in a paper would do it more mischief than the abuse of its enemies. (pp. 2145-46)

10. Mr. Otis: The present bill is perfectly harmless and contains no provision which is not practiced... under the laws of... several states... Every independent government has a right to preserve and defend itself against injuries and outrages which endanger its existence; for, unless it has this power, it is unworthy of the name of a free Government and must either fall or be subordinate to some other protection. (pp. 2145-46)

11. Mr. Otis: Unlawful combinations to oppose the measures of Government, to intimidate its officers, and to excite insurrections, are acts which tend directly to the destruction of the Constitution, and there can be no doubt that the guardians of that Constitution are bound to provide against them. (pp. 2145-46)

12. Mr. Otis: The National Government is invested with a power to protect itself against outrages of this kind, or it must be indebted to and dependent on an individual state for its protection, which is absurd. (pp. 2145-46)

13. Mr. Otis: If we go to Virginia, we shall read in their constitution that "the freedom of the press cannot be restrained, except in despotic Governments;" but in the act passed December, 1792, it is provided, "that if any person shall, by writing or speaking, endeavor to instigate the people to erect or establish any Government, separate or independent of the Government of Virginia, he shall be subject to any punishment not extending to life... which the court may adjudge." They have another act against cursing and swearing, which is merely using the liberty of speech. (pp. 2149-50)

14. Mr. Otis: The gentleman from Virginia had inquired how a line could be drawn between the liberty and the licentiousness of the press? I would inform him that an honest jury was competent to such a discrimination, they could decide upon the falsehood and malice of the intention. (pp. 2149-50)

15. Mr. Otis: Where lies the injury in attempting to check the progress... of falsehood? Or how is society aided by the gross and monstrous outrages upon truth and honor, and public character and private peace which inundate the country? (pp. 2149-50)

16. Mr. Otis: The gentleman from Virginia is fearful that an impartial jury will not be found in the present excited state of opinion; but if twelve honest men cannot be found to acquit a (libeler), he ought to be convicted.

17. Mr. Macon: The same section of the Constitution which forbids any interference with the freedom of speech and of the press, extends also to religious establishments... This bill ought to be considered, therefore, as the commencement of a system which might as well be extended to the establishment of a national religion. (pp. 2151-52)

18. Mr. Macon: Gentlemen might call this a harmless bill; however harmless it may be, it is a beginning to act upon forbidden ground, and no one can say to what extent it may hereafter be carried... This subject of the liberty of the press is sacred, and ought to be left where the Constitution had left it. The States have complete power on the subject. (pp. 2149-50)

19. Mr. Livingston: The Constitution seems to have contemplated cases which might arise at a future day. It seems to have foreseen that majorities--far be it from me to believe the present majority is of the number--might be actuated by dispositions hostile to the Government; that it might wish to pass laws to suppress the only means by which its corrupt views might be made known to the people, and therefore (the Constitution) says, *no* law shall be passed to abridge the liberty of speech and of the press. (pp. 2153-54)

20. Mr. Livingston: Many writers have... instructed the world... the means by which free Governments become Despotisms... I will take the liberty of reading an extract out of one of the best writings I have seen on this subject... The book I allude to is John Adams' Defense of the American Constitution. Remember as I read that it has been declared on this floor that none but men of a certain political opinion would be chosen by the President to office... "The Judges will be appointed by them and their party, and, of consequence, will be obsequious enough to their inclinations. The whole Judicial authority, as well as the Executive, will be employed, perverted, and prostituted to the purposes of electioneering."(pp. 2155-56)

21. Mr. Dana: No honest man wants the liberty of uttering malicious falsehood—and this law would operate against no other publications. (pp. 2155-56)

22. Mr. Gallatin: The principles of the law of political libel were founded in the worst Emperors of Rome... Governments... (with) pure motives... know that the proper weapon to combat error is truth, and that to resort to coercion and punishments in order to suppress writings attacking their measures is to confess that these could not be defended by any other means. (pp. 2163-64)

23. Mr. Harper: Gentlemen who oppose the bill have said that hitherto the Government of the United States had existed and prospered without a law of this kind, and then... asked, "What change has now taken place to render such a law necessary?" The change, in my opinion, consists in this: that heretofore we had been at peace, and are now on the point of being driven into a war with a nation which openly boasts of... its "diplomatic skill," as the.. means of paralyzing our efforts. Of the operations of this skill among us, by means of corrupt partisans and hired presses, I have no doubt. (pp. 2163-64)

24. Mr. Harper: I cannot believe... that our safety... ought to lull us into security now... unless gentlemen can convince me that, because a person had existed in health for nine years, he ought to refuse medicine when he.. feels the approach of disease. (pp. 2165-66)



The Thrust of the Arguments

Arguments in Favor of the Sedition Act		
Argument Summaries	Quote Numbers	Comments
It is the duty of the Federal Government to protect the life, liberty, and happiness of its citizens.		
The Federal Government cannot be forced to depend on the states to protect it.		
Drastic times call for drastic measures.		
The principle is already well established that certain speech is illegal.		
We must protect the Federal Government against the threat of a revolt.		
What harm could there be in trying to stop speech that injures our society?		
If a jury can't prove your innocence, then you must be guilty.		
Other (Specify)		
Other (Specify)		



The Thrust of the Arguments

Arguments Against the Sedition Act		
Argument Summaries	Quote Numbers	Comments
Freedom of the press is guaranteed in the First Amendment.		
Only the states have the right to pass a law like this.		
It's difficult to determine honest opinion from libel.		
There is already a law on the books to cover such offenses.		
In the end, lies will be shown to be lies. Those who tell lies will suffer. We don't need to do anything.		
There is a danger those in power will prosecute anyone who speaks against them.		
The Sedition Act will put a damper on free speech.		
With so much talk of war, it will be hard to find a fair and impartial jury.		
Once we lose our freedom of speech, what other freedoms might we lose?		
This law has been written to try to make sure the people now in power stay in power.		
Other (Specify)		



George Washington on the Sedition Act

George Washington to Alexander Spotswood, November 22, 1798

[[http://memory.loc.gov/cgi-bin/query/r?ammem/mgw:@field\(DOCID+@lit\(gw370024\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/mgw:@field(DOCID+@lit(gw370024)))]

And Consider to what lengths a Certain description of men in our Country have already driven and even resolved to further drive matters and then ask themselves if it is not time and expedient to resort to protecting Laws against aliens for Citizens you certainly know are not affected by that law) who acknowledge no allegiance to this Country, and in many instances are sent among us [as there is the best Circumstantial evidence to prove] for the express purpose of poisoning the minds of our people and to sow dissensions among them, in order to alienate their affections from the Government of their Choice, thereby endeavoring to dissolve the Union, and of Course the fair and happy prospects which were unfolding to our view from the Revolution.

George Washington to William V. Murray, December 26, 1798

[[http://memory.loc.gov/cgi-bin/query/r?ammem/mgw:@field\(DOCID+@lit\(gw370041\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/mgw:@field(DOCID+@lit(gw370041)))]

Mr. Envoy Logan, who arrived at Philadelphia about the time I did, brings very *flattering* accounts of the Disposition of the French Directory *towards this Country*. He has dined with one, supped with another, and in short has been as familiar with them all, (that were in place) as the hand is with its glove: and is not a little employed in propagating this Doctrine in all parts of the U: States by means of the Presses which are at the command of that Party. He says the inclination of France to be upon good terms with the United States is *now* so strong, that it *must* be our own mismanagement, and disinclination to Peace, if matters with that Country are not accommodated upon terms honorable and advantageous to this. 35

[Note 35: On Jan. 30, 1799, the President approved “An Act for the punishment of certain crimes therein specified,” which described precisely activities like those of Dr. Logan, and affixed a punishment of a fine not exceeding \$5,000, and imprisonment of not less than 6 months, not more than 3 years. A similar law is now in force.]

The Alien and Sedition Laws, 37 are now the desiderata in the Opposi[t]ion. But any thing else would have done; and something there will always be, for them to torture, and to disturb the public mind with their unfounded and ill favored forebodings.

George Washington to John Marshall, December 30, 1798

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The Alien and Sedition Laws having employed many Pens, and we hear a number of tongues, in the Assembly of this State; the latter, I understand, to a very pernicious purpose; I send you the production of Judge Addison on these subjects. Whether any new lights are cast upon them by his charge, you will be better able to decide when you have read it. My opinion is, that if this, or

other writings flashed conviction as clear as the Sun in its Meridian brightness, k would produce no effect in the conduct of the leaders of opposition; who, have points to carry, from which nothing will divert them in the prosecution. When you have read the charge give it to Bushrod Washington, or place it to any other uses you may think proper. I wish success to your Election, most sincerely, and if it should fail [of which I hope there is not the least danger] I shall not easily forgive myself for being urgent with you to take a Poll. I offer you the compliments of the Season, and with much truth remain etc.

George Washington to Bushrod Washington, December 31, 1798

[[http://memory.loc.gov/cgi-bin/query/r?ammem/mgw:@field\(DOCID+@lit\(gw370049\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/mgw:@field(DOCID+@lit(gw370049)))]

By this conveyance, I have sent to Genl Marshall, Judge Addisons charge to the Grand Juries of the County Courts of the fifth Circuit, of the State of Pennsylvania, and requested, after he had read it, to give it to you, or dispose of it in any other manner he might think proper. This charge is on the Liberty of Speech and of the Press, and is a justification of the Sedition and Alien Laws.

But I do not believe that any thing contained in it; in Evans's 41 Pamphlet; 42 or in any other writing, will produce the least change in the conduct of the leaders of opposition, to the measures of the General Government. They have points to carry, from which no reasoning, no inconsistency of conduct, no absurdity, can divert them. If, however, such writings should produce conviction in the minds of those who have, hitherto, placed faith in their assertions, it will be a fortunate event for this Country.

George Washington to Patrick Henry, January 15, 1799

[[http://memory.loc.gov/cgi-bin/query/r?ammem/mgw:@field\(DOCID+@lit\(gw370056\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/mgw:@field(DOCID+@lit(gw370056)))]

It would be a waste of time, to attempt to bring to the view of a person of your observation and discernment, the endeavors of a certain party among us, to disquiet the Public mind among us with unfounded alarms; to arraign every act of the Administration; to set the People at variance with their Government; and to embarrass all its measures. Equally useless would it be to predict what must be the inevitable consequences, of such policy, if it cannot be arrested.

Unfortunately, and extremely do I regret it, the State of Virginia has taken the lead in this opposition. I have said the *State*, Because the conduct of its Legislature in the Eyes of the world, will authorise the expression; because it is an incontrovertable fact, that the principle leaders of the opposition dwell in it; and because no doubt is entertained, I believe, that with the help of the Chiefs in other States, all the plans are arranged; and systematically pursued by their followers in other parts of the Union; though in no State except Kentucky (that I have heard of) has Legislative countenance been obtained, beyond Virginia. 47

[Note 47: The “Kentucky Resolutions,” so called, were adopted by that legislature Nov. 16, 1798; Virginia adopted similar resolves December 24. The gist of both sets of resolutions was that a State had the right to nullify an act of Congress, to which it did not accede. Thomas Jefferson drafted the Kentucky resolutions, and James Madison those passed by the Virginia legislature. The cause of the adoption of these resolutions was the Alien and Sedition laws.]



Jefferson on the Alien and Sedition Acts

Source: “[Jefferson on the Alien and Sedition Acts, page 30 of the Jefferson Encyclopedia](#)” [<http://etext.lib.virginia.edu/etcbin/foley-browse?id=JC0056>] on the Electronic Text Center of the University of Virginia, a link from the EDSITEment resource **Internet Public Library** [<http://www.ipl.org/>].

To James Madison, June 1798

They have brought into the lower House a sedition bill, which, among other enormities, undertakes to make printing certain matters criminal, though one of the amendments to the Constitution has so expressly taken religion, printing presses, &c. out of their *coercion* (ability to limit them). Indeed this bill, and the alien bill are both so *palpably* [obviously] in the teeth of the Constitution as to show they mean to pay no respect to *it* [the Constitution]. --

Kentucky Resolutions, 1798

If the Alien and Sedition Acts should stand, these conclusions would flow from them: that the *General Government* (federal government) may place any act they think proper on the list of crimes, and punish it themselves whether *enumerated* [specified] or not enumerated by the Constitution as *cognizable by them* [falling under the jurisdiction of Congress]: that they may transfer its cognizance to the President, or any other person, who may himself be the accuser, counsel, judge and jury, whose suspicion may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: that a very numerous and valuable description of the inhabitants of these states being, by this precedent, reduced, as outlaws, to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no *rampart* [protection] now remains against the passions and the powers of a majority in Congress to protect ... the minority of the same body, the legislatures, judges, governors, and counselors of the States, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the States and people, or who for other causes, good or bad, may be obnoxious to the views, or marked by the suspicions of the President, or be thought dangerous to his or their election, or other interests, public or personal: that the friendless alien has indeed been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather, has already followed, for already has a Sedition Act marked him as its prey: that these and successive acts of the same character, unless arrested at the threshold, necessarily drive these States into revolution and blood, and will furnish new *calumnies* [false accusations] against republican government, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron.

To James Madison, January 1799

Petitions and *remonstrances* [protests] against the Alien and Sedition laws are coming from various parts of New York, Jersey and Pennsylvania. I am in hopes Virginia will stand so countenanced by those States as to repress the wishes of the Government to coerce her, which they might venture on if they supposed she would be left alone. Firmness on our part, but a passive firmness, is the true course. Anything rash or threatening might check the favorable dispositions of these middle States, and rally them again around *the measures which are ruining us* (the Alien and Sedition Acts). --

To Edward Pendleton, February 1799

In Pennsylvania, we fear that the ill-designing may produce *insurrection* (revolt against the Alien and Sedition laws). Nothing could be so fatal. Anything like force would check the progress of the public opinion, and rally them around the government. This is not the kind of opposition the American people will permit. But keep away all show of force, and they will *bear down the evil propensities of the government* (work against abuses of power by the government), by the constitutional means of election and petition. --

To James Madison, February 1799

Yesterday witnessed a scandalous scene in the House of Representatives. It was the day for taking up the report of their committee against the Alien and Sedition laws, &c. They [the Federalists] held a caucus and determined that not a word should be spoken on their side, in answer to anything which should be said on the other. Gallatin *took up* [began a discussion of objections to] the Alien, and Nicholas the Sedition law; but after a little while of common silence, they began to enter into loud conversations, laugh, cough, &c., so that for the last hour of these gentlemen's speaking, they must have had the lungs of a *vendue master* [an auctioneer] to have been heard. Livingston, however, attempted to speak. But after a few sentences, the Speaker called him to order, and told him what he was saying was not to the question. It was impossible to proceed. The question was carried in favor of the report, 52 to 48; the real strength of the two parties is 56 to 50. --



Excerpts from the Virginia and Kentucky Resolutions

The Virginia Resolution Excerpt

Madison's Virginia Resolutions begin by declaring that the Federal Government holds power only through a compact of the states. It also explains its objections to the Alien and Sedition as a limitation on free speech beyond the express powers of the Federal Government.

That this Assembly doth explicitly and peremptorily declare, that it views **the powers of the federal government, as resulting from the compact, to which the states are parties**; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

....That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the “**Alien and Sedition Acts**” **passed at the last session of Congress; the first of which exercises a power no where delegated to the federal government, and which by uniting legislative and judicial powers to those of executive, subverts the general principles of free government; as well as the particular organization, and positive provisions of the federal constitution; and the other of which acts, exercises in like manner, a power not delegated by the constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto;** a power, which more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed, the only effectual guardian of every other right.

The Kentucky Resolution Excerpt

Jefferson believed that the Judicial Branch was not empowered to judge the constitutionality of the actions of the Executive or Legislative Branches. A key passage in the Kentucky Resolutions (passed in two parts in 1798 and 1799) centered on his belief that only the states could judge an “infraction” of the Federal Government. Nothing could stop the Federal Government from despotism if it were the only check on itself. “Nullification,” for a state to declare a Federal law null and void, was the only “rightful remedy.” The principle of Nullification would later be adopted by other states. In 1832, the South Carolina Ordinance of Nullification declared federal import duties null and void. The principle of Nullification was important in the secession of the

South. The 1799 Kentucky Resolution declares the Alien and Sedition Acts unconstitutional, but without the specific explanation found in the Draft (available at <http://www.yale.edu/lawweb/avalon/jeffken.htm> on the EDSITEment resource [The Avalon Project](#) [<http://www.yale.edu/lawweb/avalon/avalon.htm>]).

RESOLVED, That this commonwealth considers the federal union, upon the terms and for the purposes specified in the late compact, as conducive to the liberty and happiness of the several states: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeable to its obvious and real intention, and will be among the last to seek its dissolution: That if those who administer the general government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, annihilation of the state governments, and the erection upon their ruins, of a general consolidated government, will be the inevitable consequence: **That the principle and construction contended for by sundry of the state legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism; since the discretion of those who administer the government, and not the constitution, would be the measure of their powers:** That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy: That this commonwealth does upon the most deliberate reconsideration declare, that the said alien and sedition laws, are in their opinion, palpable violations of the said constitution; and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet, in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal: That although this commonwealth as a party to the federal compact; will bow to the laws of the Union, yet it does at the same time declare, that it will not now, nor ever hereafter, cease to oppose in a constitutional manner, every attempt from what quarter so ever offered, to violate that compact....



The Trial of Thomas Cooper

Excerpted from “[The Kentucky and Virginia Resolutions: Guideposts of Limited Government](#),” by William J. Watkins, Jr. [http://www.constitution.org/lrev/kentvirg_watkins.txt], on the website of the Constitution Society, a link from the EDSITEment resource **Internet Public Library**.

Thomas Cooper, who later became the president of the South Carolina College, was a multitalented English lawyer and radical who had moved to the United States in 1794. Cooper was arrested on 9 April 1800 for a handbill written five months earlier, and his trial attracted national attention. The secretaries of war, state, and the navy all attended the trial. Congressman Robert Goodloe Harper was also there to observe the application of section 2 of the Sedition Act, which he had drafted. Timothy Pickering went so far as to sit on the bench with the two judges, Justice Samuel Chase and District Judge Richard Peters.

Attorney General William Rawle, ...handled the case for the government. Cooper was indicted for “being a person of wicked and turbulent disposition, designing and intending to defame the President ... and to bring him into contempt and disrepute, and excite against him the hatred of the good people of the United States” (Cooper 1800, 7).

Cooper’s questioned writings included *sundry* (various) complaints against the government. Those stressed by Rawle were the assertions that the country had been saddled with the expense of a permanent navy and a standing army; that the government had foolishly borrowed money at 8 percent in time of peace; that Adams’s statements about the French “might justly have provoked war”; and that Adams had interfered with the proceedings of a court of law. Cooper described the last point as “a stretch of authority which the Monarch of Great Britain would have shrunk from” (1800, 7). Cooper pleaded not guilty and used the truth as a defense. As he mounted his defense it was clear he was not speaking merely to the court. Cooper’s defense was even more an indictment of Adams and a message to the people to support the Jeffersonians in the election that was only months away.

Cooper questioned how the people could rationally use their franchise if “perfect freedom of discussion of public characters be not allowed” [1800, 19]. He said he knew the king of England could do no wrong, “but I did not know till now that the President of the United States had the same attribute” [1800, 20]. At remarks such as these, vexation surely showed on the faces of the Federalists in the courtroom. However, compared with his actions at some of his other trials, Justice Chase showed great patience before launching into his diatribe [tirade] of jury instruction.

In his charge to the jury, Justice Chase *took on the air of* [acted like] a prosecutor rather than a judge. He even pointed out to the jury several things that Attorney General Rawle had left out of the prosecution’s case. Chase then declared that Cooper’s “conduct shewed that he intended to dare and defy the government, and to provoke them, and his subsequent conduct [defense presented at trial] satisfies in my mind, that such was his disposition” (Cooper 1800, 46). Chase regarded Cooper’s publication as the boldest attempt he had seen to poison the minds of the people. And if the jury was not satisfied that Cooper had proved his innocence regarding all points of the indictment, they must find him guilty.

So charged, the jury could reasonably have feared that a verdict of not guilty would earn them arrest for sedition. Chase—never impartial—got the verdict he desired; Cooper was fined \$400 and imprisoned for six months. “I do not want to oppress,” Chase said as he sentenced Cooper, “but I will restrain, as far as I can, all such licentious attacks on the government of the country” (Cooper 1800, 46).

One wonders what sort of statements by the political opposition could avoid being characterized as “licentious attacks on the government.” Clearly, under the Federalists’ Sedition Act, all less-than-favorable discussion of government policies was prohibited.